

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

[1] JOHN FRAKES)
)
Plaintiff,)
)
vs.) Case No. CIV-17-0093-HE
)
[1] CHRISTOPHER LEE MOORE,) Case No. CJ-2016-452
an individual; [2] PERIMETER) (Payne County District Court)
TRANSPORTATION CO., LLC, a)
foreign limited liability company)
doing business in the State of Oklahoma;)
and [3] STATE AUTOMOBILE MUTUAL)
INSURANCE COMPANY, a foreign)
insurance company licensed and doing)
business in the State of Oklahoma,)
)
Defendants.)

**NOTICE OF REMOVAL OF DEFENDANTS PERIMETER TRANSPORTATION
CO., LLC AND STATE AUTOMOBILE MUTUAL INSURANCE COMPANY**

Pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, Defendants Perimeter Transportation Co. LLC (“Perimeter”) and State Automobile Mutual Insurance Company (“State Auto”) hereby give notice of removal of Case No. CJ-2016-452, filed in the District Court in and for Payne County, Oklahoma, to the United States District Court for the Western District of Oklahoma.

TIMELINESS AND CONSENT TO REMOVAL

1. On October 13, 2016, Plaintiff commenced an action in the District Court of Payne County, State of Oklahoma, by filing a Petition in Case No. CJ-2016-452, styled: *John Frakes, Plaintiff v. Christopher Lee Moore, an individual; Perimeter*

Transportation Co. LLC, a foreign limited liability corporation doing business in the State of Oklahoma; and State Automobile Mutual Insurance Company, a foreign insurance company licensed and doing business in the State of Oklahoma, Defendants. A copy of the District Court Docket is attached. Court Docket, [Ex. 1]. A file-stamped copy of the District Court Petition is also attached hereto. Petition, [Ex. 2].

2. Summons were issued to all defendants on October 13, 2016. Summons, [Ex. 3].

3. Defendant Perimeter was served its Summons on January 12, 2017. Return of Summons for Perimeter, [Ex. 4].

4. The return of service filed by Plaintiff for Defendant State Automobile indicates that the Summons was received by Oklahoma Insurance Department on January 12, 2017. Return of Summons for State Auto, [Ex. 5]. However, the documents forwarded by Commissioner indicate that the Summons was received by the legal department of the Oklahoma Insurance Department and forwarded to State Auto on January 17, 2017. Correspondence and Summons to State Auto from Insurance Commissioner, [Ex. 6]. State Auto actually received the Summons on January 23, 2017.

Id.

5. Upon information and belief, Defendant Christopher Lee Moore (“Moore”) has not been served with his Summons at this time.

DIVERSITY OF CITIZENSHIP

6. According to the Petition, Plaintiff John Frakes is a resident of Crescent, Oklahoma. Petition, ¶ 1 [Ex. 2]. Thus, for the purposes of this litigation, Plaintiff is a

citizen of Oklahoma.

7. Upon information and belief, Defendant Moore is an individual that resides in the State of Mississippi. Id., ¶ 2 [Ex. 2].

8. Defendant Perimeter is a limited liability company organized and existing under the laws of the State of Tennessee, and whose principal place of business is in the State of Tennessee. Id., ¶ 3 [Ex. 2]; Div. of Business Servs., Tenn. Sec'y of State, Business Entity Detail for Perimeter Transportation Co. LLC., *available at* <https://tnbear.tn.gov/Ecommerce/FilingDetail.aspx?CN=085093076156113194089080043038004106001059100231> (last visited Jan. 24, 2017) [Ex. 7].

9. The sole members of Perimeter are Richard A. Russell, Michael E. Russell, and Stewart D. Teuscher. Richard A. Russell is a resident of the State of Tennessee. Michael E. Russell and Stewart D. Teuscher are residents of the State of Mississippi. Disclosure Statement Identifying Constituents of Perimeter, [Ex. 8]¹. For the purposes of diversity jurisdiction, Perimeter is a citizen of the States of Tennessee and Mississippi.

9. Defendant State Auto is an Ohio corporation with its principal place of business in Columbus, Ohio. Ohio Sec'y of State, Corporation Details for State Automobile Mutual Insurance Company, *available at* https://www5.sos.state.oh.us/ords/f?p=100:7:0::NO:7:P7_CHARTER_NUM:98112 (last visited Jan. 24, 2017) [Ex. 9].

10. Insofar as Plaintiff is a citizen of Oklahoma and the Defendants are citizens

¹ In compliance with LCvR 7.1.1, Perimeter's Disclosure Statement Identifying Constituents will be filed concurrently with this Notice of Removal.

of Mississippi, Tennessee, and Ohio, complete diversity of citizenship exists for purposes of 28 U.S.C. § 1332(a)(1).

AMOUNT IN CONTROVERSY

11. In the state court Petition, Plaintiff has asserted claims for negligence and negligence per se in relation to a motor vehicle accident that occurred in Payne County, Oklahoma on March 30, 2015. Petition, ¶¶ 5, 7 [Ex. 2]. Plaintiff alleges in his Petition that Moore, as he was approaching an intersection, negligently failed to stop and collided with the rear of Plaintiff's vehicle, causing Plaintiff's vehicle to impact the vehicle in front of him. Id., ¶ 10 [Ex. 2]. Plaintiff alleges that he was seriously injured and suffered injuries which required bilateral shoulder surgery, a cervical discectomy, lumbar interbody fusion, along with the need for scar revision surgery. Id., ¶ 11 [Ex. 2].

12. Plaintiff further alleges that Defendant Moore was acting in the course and scope of his employment with Defendant Perimeter at the time of the accident, thereby making Defendant Perimeter vicariously liable for Defendant Moore's negligent actions. Id., ¶¶ 8, 15-17 [Ex. 2].

13. Plaintiff alleges that State Auto provided liability insurance to Defendants Moore and Perimeter at the time of the accident set forth in his Petition, and that pursuant to the Oklahoma Motor Carrier Act of 1995, State Auto is bound by its insurance policy to make compensation to Plaintiff for injuries resulting from the subject incident. Id., ¶¶ 21-22 [Ex. 2]. Plaintiff alleges that as the insurer for Moore and Perimeter, State Auto is directly liable to Plaintiff for their acts and omissions. Id., ¶ 23 [Ex. 2].

AMOUNT IN CONTROVERSY

14. Plaintiff is seeking damages against the Defendants in an amount exceeding \$75,000.00. Petition, p. 4, [Ex. 2].

WHEREFORE, for all the foregoing reasons, this action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and is one which may be removed by this Court pursuant to 28 U.S.C. § 1441. This action is between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Respectfully submitted,

s/Laura L. Eakens

J. Derrick Teague, OBA #15131
Laura L. Eakens, OBA #20196
JENNINGS | TEAGUE, P.C.
204 N. Robinson Avenue, Suite 1000
Oklahoma City, OK 73102
Telephone: (405) 609-6000
Facsimile: (405) 609-6501
Email: dteague@jenningsteague.com
leakens@jenningsteague.com

ATTORNEYS FOR DEFENDANTS
PERIMETER TRANSPORTATION CO, LLC
and STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that on the 31st day of January, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing was sent to the following ECF registrants:

Scott R. Jackson
MARTIN JEAN & JACKSON
P.O. Box 2403
Ponca City, OK 74602
ATTORNEY FOR PLAINTIFF

s/Laura L. Eakens
Laura L. Eakens